



developed an unmatched program and national model for promoting homeownership for the disadvantaged – often identified (and targeted/victimized) as borrowers in the subprime market. Most recently, NACA has developed an unparalleled program for helping homeowners who face foreclosure.

2. HUD is an agency of the United States, as defined in 5 U.S.C. § 552(f)(1), and has possession of and control of the records NACA seeks and is entitled to receive as a matter of law.

### **JURISDICTION AND VENUE**

3. The United States District Court for the District of Columbia has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331, and venue is proper pursuant to 28 U.S.C. § 1391(e).

### **FACTS**

4. NACA made three separate information requests to HUD. By two letters dated March 1, 2011, NACA requested various documents concerning HUD's Real Estate Settlement Practices Act Enforcement Division review of NACA's business practices ("RESPA Letter"), and HUD's Housing Counseling Program review of NACA's business practices ("Counseling Letter"). *See* attached Exhibits A and B, respectively.

5. Both letters reasonably described the records sought and conformed to HUD's FOIA rules located in Code of Federal Regulations Title 24 at Part 15.

6. By two letters dated March 23, 2011, HUD FOIA Branch Chief Vicky J. Lewis ("Lewis") acknowledged receipt of NACA's RESPA and Counseling Letters but offered no substantive response indicating whether HUD intended to comply with those requests. While both of Lewis' letters stated that HUD "will comply with [NACA's] request," Lewis qualified HUD's commitment with the phrase "to the extent permissible by law," and in so doing,

effectively determined, promised, and delivered nothing. *See* attached Exhibits C and D, respectively.

7. Lewis further stated that the FOIA statute permitted HUD “20 business days within which to make a determination on the request,” suggesting that HUD’s determination of compliance had not yet been made, and predicted that “unusual circumstances” would require an additional “10 business days,” on top of the 20 days generally permitted by the statute.

8. Lewis also stated that she had “assigned” NACA’s RESPA and Counseling Letter requests “to Ms. Denise Lenkiewicz.”

9. More than 60 days have passed since Lewis initially acknowledged receipt of NACA’s RESPA and Counseling Letters. No documents have been provided. No determination has been made. No follow-up to Lewis’ correspondence has been made by her, her designees, or any other official from HUD. NACA has received no indication from Lewis, Lenkiewicz or any other official from HUD establishing that HUD has taken any substantive action in response to NACA’s proper requests for information.

10. By a third letter dated March 4, 2011, NACA also requested various documents from HUD concerning HUD’s Office of the Inspector General (“OIG”) audit of NACA’s business practices (“Audit Letter”). *See* attached Exhibit E.

11. NACA’s Audit Letter reasonably described the records sought and conformed to HUD OIG’s FOIA rules located in Code of Federal Regulations Title 24 at Part 2002.

12. By letter dated April 12, 2011, HUD OIG Freedom of Information Officer Melvin S. Brooks, Sr. (“Brooks”) acknowledged receipt of NACA’s Audit Letter, but failed to indicate whether HUD OIG intended to comply with NACA’s request. Brooks described his letter as an “interim response” and stated that he would provide a “substantive response in the near future.” *See* attached Exhibit F.

13. More than 40 days have passed since Brooks acknowledged receipt of NACA's Audit Letter. No documents have been provided. No determination has been made. No follow-up to Brooks' correspondence has been made by him, his designees, or any other official from HUD. NACA has received no indication from Brooks, his designees, or any other official from HUD establishing that HUD has taken any substantive action in response to NACA's Audit Letter.

**FREEDOM OF INFORMATION ACT VIOLATIONS**

14. HUD's failure to respond to NACA's document requests within the express requirements of 5 U.S.C. § 552(a)(6)(A) violates NACA's rights under FOIA.

15. NACA has exhausted applicable administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C), and all other conditions precedent to NACA's entitlement to recover on the claims herein have been performed or waived.

16. HUD's failure to comply with FOIA violates NACA's right to obtain the requested documents and warrants entry of the relief demanded herein, its reasonable attorneys' fees incurred in bringing this action, and such other and further relief as this Court deems just and proper under the circumstances.

WHEREFORE, the Neighborhood Assistance Corporation of America respectfully requests that judgment be entered by this Court in its favor, and against the U.S. Department of Housing and Urban Development, granting it the following relief:

- A. Enjoin HUD from withholding the requested agency records;
- B. Order HUD to provide NACA with the requested records immediately following entry of Judgment;
- C. Award NACA its costs and reasonable attorneys' fees in pursuing this action, pursuant to 5 U.S.C. § 552(a)(4)(E)(i);

- D. Issue a written finding that the circumstances surrounding HUD's withholding of public records requested by NACA raises questions concerning whether agency personnel acted arbitrarily and capriciously with respect to the withholding, pursuant to 5 U.S.C § 552(a)(4)(F)(i);
- E. Order that Special Counsel promptly initiate a proceeding to determine whether disciplinary action is warranted against the HUD officer(s) or employee(s) primarily responsible for the withholding, pursuant to 5 U.S.C. § 552(a)(4)(F)(i); and
- F. Order that NACA be granted such other and further relief as this Court deems just and proper under the circumstances.

Respectfully submitted,

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